



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/271,024 03/17/99 SAEBO

A CONLINCO-036

J MITCHELL JONES
MEDLEN & CARROLL
220 MONTGOMERY STREET
SUITE 2200
SAN FRANCISCO CA 94104

HM12/0705

EXAMINER

WANG, S

ART UNIT

PAPER NUMBER

1617

DATE MAILED:

07/05/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

BEST AVAILABLE COPY

Office Action Summary

Application No.

09/271,024

Applicant(s)

SAEBO ET AL.

Examiner

Shengjun Wang

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 and 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

DETAILED ACTION

This application is a continuation-in-part of Serial No. 09/132,593.

1. Applicant's election with traverse of the invention of group II, claims 5-8 in Paper No. 8 submitted April 19, 2000 is acknowledged. The traversal is on the ground(s) that the search of all of the claimed compounds is not an undue burden on the examiner. This is not found persuasive because of the fundamental differences in the chemical structures of the three groups. Group I is drawn to free fatty acids, group II is drawn to triglycerides and group III is drawn to alkyl fatty esters. Because these inventions are distinct in the chemical structures, the search for one group is not required for the other groups. Note that the search is not limited to the patent literature. Regarding the remarks relating to the classification of group II, Class 435, subclass 159 is considered a proper class and subclass for group II because the process of making the triglycerides, the critical ingredient in the claimed composition, involves micro-organism or enzymes derived from a micro-organism. See examples 5 and 6, page 37 of instant application.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-4 and 9-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 8 submitted April 19, 2000.

Disclosure Objection

3. The disclosure is objected to because of the following informalities: The drawing of acyglycerol structure on page 7 is incorrect according to the description of the structure on page 7 lines 5-25. The chemical structure should be consistent with the description.

Art Unit: 1617

Appropriate correction is required.

Claim Objection

4. Claim 5 is objected to because of the following informalities: The drawing of the acyglycerol structure in the claim is incorrect according to the description of the structure given in the claim. The chemical structure should be consistent with the description. Appropriate correction is required.

Claim Rejections 35 U.S.C. – 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recited the amounts of each isomers in terms of "%". Applicants have not defined the basis of the percentage, e.g., by weight, volume or mole. The claims are indefinite as to the amounts of the isomers present in the composition.

Claim Rejections 35 U.S.C. – 103

a. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1617

7. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nilsen et al. (US 5,885,594) in view of Cook et al. (US 5,554,646, No. 4 in the IDS of April 13, 2000)

Nilsen et al teach a composition comprising 90-100 % of an acyglycerol compound wherein the fatty acid radical is a conjugated polyunsaturated fatty acid. See, particularly, column 3, lines 5-15. The preferred conjugated polyunsaturated fatty acid is conjugated linoleic acid which is defined as c9, t11-octadecadienoic acid and/or c10, t12-octadecadienoic acid. See, particularly, column 3, lines 14-15 and column 4, lines 4-6. Nilsen et al. further teach food product comprising the said composition. See, particularly, column 12, lines 30-67, column 13, lines 1-67 and column 14, lines 1-9.

Nilsen et al. do not teach expressly the specific amounts of each of the two isomers, i.e., c9, t11-octadecadienoic acid and c10, t12-octadecadienoic acid, or the employment of the composition in animal feed.

However, Cook et al. et al. teach that both c9, t11-octadecadienoic acid and c10, t12-octadecadienoic acid, and as well as their mixture are known to be beneficial for animal health, See, particularly, column 1, lines 51-57.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to make the composition of Nilsen et al. with acyglycerol compounds wherein the fatty acid moiety is a mixture of about equal amounts of c9, t11-octadecadienoic acid and c10, t12-octadecadienoic acid and employ the composition in feed for animals. Note that Nilsen et al do not use other isomers of conjugated linoleic acids. Therefore meet the limitation set forth in claim 5 that other isomers are present in amounts less than 1% is met..

Art Unit: 1617

A person of ordinary skill in the art would have been motivated to make the composition of Nilsen et al. with acyglycerol compounds wherein the fatty acid moiety is a mixture of about equal amounts of c9, t11-octadecadienoic acid and c10, t12-octadecadienoic acid and employ the composition in feed for animals because both compounds are known to be useful in food or feed products. The optimization of the ratio of the compounds is considered within the skill of artisan. Further, a composition known to be useful in food products is reasonably expected to be useful in feed products for animal

8. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Timmermann et al. (WO98/49129, No. 25 in the IDS of April 13, 2000) in view of Cook et al. (US 5,554,646, No. 4 in the IDS of April 13, 2000).

9. Timmermann et al teach a composition for food comprises acyglycerol compounds wherein the fatty acid group is conjugated linoleic acid. See the abstract.

Timmermann et al. do not teach expressly the specific isomers employed in the acyglycerol compounds.

However, Cook et al. et al. teach that both c9, t11-octadecadienoic acid and c10, t12-octadecadienoic acid, and their mixture are known to be beneficial for animal health, See, particularly, column 1, lines 51-57.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to make the composition of Timmermann et al with acyglycerol compounds wherein the fatty acid moiety is a mixture of about equal amounts of c9, t11-octadecadienoic acid and c10, t12-octadecadienoic acid and employ the composition in feeds for animals.

Art Unit: 1617

A person of ordinary skill in the art would have been motivated to make the composition of Timmermann et al with acyglycerol compounds wherein the fatty acid moiety is a mixture of about equal amounts of c9, t11-octadecadienoic acid and c10, t12-octadecadienoic acid and employ the composition in food and feed for animal because both compounds are known to be useful in food or feed products. The optimization of the ratio of the compounds is considered within the skill of artisan. Further, a composition known to be useful in food products is reasonably expected to be useful in feed products for animal.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Shengjun Wang

AU 1617

June 26, 2000


MINNA MOEZIE
PRIMARY EXAMINER